

# SUPREME COURT OF ARKANSAS

No. 06-933

JAMES R. MUNSON, JR.,  
APPELLANT,

VS.

ARKANSAS DEPARTMENT OF  
CORRECTION SEX OFFENDER  
SCREENING & RISK ASSESSMENT,  
APPELLEE,

**Opinion Delivered** May 17, 2007

PETITION FOR REHEARING

PETITION DENIED.

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**ANNABELLE CLINTON IMBER, Associate Justice**

In September 2003, the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee (SOSRA) assessed James R. Munson as a level III sex offender, pursuant to the Sex Offender Registration Act of 1997, Ark. Code Ann. §§ 12-12-901 through 12-12-922 (Repl. 2003 & Supp. 2005). Munson requested an administrative review of the assessment under Ark. Code Ann. § 12-12-922 (Supp. 2005). After protracted correspondence between Munson and two SOSRA committee members, Munson received three letters containing ambiguous statements about the results of the administrative review. Munson eventually filed a petition for judicial review of the SOSRA assessment in the Circuit Court of Pulaski County. *See* Ark. Code Ann. § 12-12-922 (a)(7)(A)(ii). In response, SOSRA filed a motion to dismiss Munson's petition for judicial review because Munson filed his petition after the thirty-day deadline proscribed in Ark. Code Ann. § 12-12-922 (a)(7)(A)(ii). The circuit court granted the motion to dismiss finding that Munson failed to file his petition for

judicial review within thirty (30) days after receiving SOSRA's initial letter concerning his administrative review.

Munson then lodged an appeal in this court, and we issued our decision in the matter on March 22, 2007. *See Munson v. Arkansas Department of Correction Sex Offender Screening & Assessment*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Mar. 22, 2007). We explained that in order for SOSRA's letters regarding the administrative review to be subject to judicial review under Ark. Code Ann. §§ 12-12-922(a)(7)(A)(ii) and the judicial review section of the Administrative Procedure Act (APA), Ark. Code Ann. § 25-15-212, the letter must constitute notice of the final decision of the SOSRA committee. Under Ark. Code Ann. § 25-15-210(b)(2) an agency's final decision "shall include findings of fact and conclusions of law, separately stated." *Id.* Thus, we concluded that the committee's initial letter to Munson was not a final decision of the committee, in part, because it did not contain any such findings. We also decided to dismiss Munson's appeal without prejudice because there was no proof in the record that the SOSRA committee members sent Munson any of the letters by certified mail, as required by Ark. Code Ann. § 12-12-922 (b)(7)(A)(i), and therefore we could not conclude that he had received notice of SOSRA's final decision.

Upon petition for rehearing, SOSRA does not challenge our decision that Munson did not receive notice of the agency's final decision by certified mail. Instead, SOSRA contends that although section 12-12-922 allows a sex offender to obtain judicial review of SOSRA's administrative review of his risk assessment through the APA's judicial review section, Ark. Code Ann. § 25-15-212, the General Assembly did not intend for any other provisions of the

APA to apply to the sex-offender-assessment process. Specifically, SOSRA argues that an administrative review of a sex offender's risk assessment does not constitute an "adjudication" as defined under the APA because no hearing is required in the assessment process. Accordingly, SOSRA argues that the APA does not apply to the committee's assessment determination, and thus the administrative review does not have to contain specific findings of fact and law. Based upon this analysis, SOSRA asks this court to remove the language in our decision that requires SOSRA to include specific findings of fact and law in the agency's final decision. For the reasons stated below, we decline SOSRA's request and therefore deny the petition for rehearing.

Under the APA, section 25-15-212(a) provides that "[i]n cases of *adjudication*, any person . . . who considers himself or herself injured in her person, business, or property by final agency action shall be entitled to judicial review of the action." *Id.* (emphasis added). Proceedings for judicial review "shall be instituted by filing a petition [in the circuit court] within thirty (30) days after service upon the petitioner of the agency's final decision." Ark. Code Ann. § 25-15-212(b) (emphasis added). An "adjudication" is defined as an "agency process for the formulation of an order," and an "order" is "the final disposition of an agency in any matter other than rule making, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing." Ark. Code Ann. §25-15-202 (1)(A) and (5) (Supp. 2005). "In every case of adjudication, a final decision or order shall be in writing or stated in the record." Ark. Code Ann. § 25-15-210(b)(1) (Repl. 2002). "A final decision shall include *findings of fact and conclusions of law*, separately stated." Ark. Code Ann. § 25-15-

210(b)(2) (Repl. 2002) (emphasis added).

Pursuant to the Sex Offender Registration Act, the SOSRA committee shall perform an assessment of each sex offender in accordance with the SOSRA committee guidelines, and the committee shall assign the sex offender a risk level. *See* Ark. Code Ann. § 12-12-922(a). The sex offender can then challenge the risk level by requesting an administrative review. Ark. Code Ann. § 12-12-922(b)(1)(A). A member of the committee shall conduct the administrative review within thirty (30) days of receiving a request for review, and “[t]he *findings* of the administrative review shall be sent to the sex offender by certified mail.” Ark. Code Ann. § 12-12-922(b)(6)(A) & (7)(A) (emphasis added). “Upon receipt of the *findings*, the sex offender has thirty (30) days to file a petition under the Arkansas Administrative Procedure Act § 25-15-201, et. seq., for judicial review . . . .” Ark. Code Ann. § 12-12-922(b)(7)(B) (emphasis added).

SOSRA argues that the APA does not apply to the SOSRA committee’s administrative review of a sex offender’s risk assessment because section 12-12-922 does not require a hearing, and, therefore, the administrative review is not an order resulting from an adjudication. According to SOSRA’s petition for rehearing, the SOSRA committee is only required to send the sex offender a certified letter “stating the results of SOSRA’s consideration of the offender’s request for review of his registration level,” and section 12-12-922 does not require any formal findings of fact or law. Such a statutory interpretation, however, is contrary to the plain language of section 12-12-922.

The General Assembly specifically stated that judicial review of SOSRA assessment decisions would be governed by the provisions of the APA, including the judicial review

provision in that subchapter, Ark. Code Ann. § 25-15-212. *See* Ark. Code Ann. §§ 12-12-922(b)(7)(B) and 25-15-212. In deciding that judicial reviews of SOSRA decisions would be administered under Ark. Code Ann. § 25-15-212, the General Assembly relegated judicial review of such decisions to a statute that deals exclusively with adjudications. *See* Ark. Code Ann. § 25-15-212(a) (“In cases of adjudication, any person . . . who considers himself or herself injured . . . shall be entitled to judicial review.” *Id.* (emphasis added)). Although we agree with SOSRA that section 12-12-922 does not require a hearing and thus does not fall squarely within the definition of an “order,” *see* Ark. Code Ann. § 25-15-202(5), the General Assembly’s decision to place judicial review of SOSRA decisions under the APA reflects its intent to have an administrative review under section 12-12-922 function as an adjudication by the SOSRA committee. Accordingly, it follows that a SOSRA administrative review must meet the specifications for a reviewable adjudication under Ark. Code Ann. § 25-15-212. An adjudication is a final decision of an agency that must contain specific findings of fact and law, and thus the SOSRA committee’s administrative reviews should be accompanied by such findings. Ark. Code Ann. § 25-15-210(b). Contrary to SOSRA’s argument that the SOSRA committee need only send the sex offender a letter containing the bare results of the committee’s decision as to whether the request for review is meritorious, section 12-12-922 does in fact require the committee to send “findings” of the administrative review, which proscription is consistent with the requirements of the APA. *See* Ark. Code Ann. § 12-12-922(7)(A)(i) & (ii).

Moreover, neither this court nor the circuit court can review a decision that is not final,

and the APA requires specific findings of fact or law to accompany a final decision of an agency. *See McGann v. Pine Bluff Police Dept.*, 334 Ark. 352, 974 S.W.2d 462 (1998). Furthermore, without the required findings, the task of a reviewing court— to determine whether SOSRA’s decision was correct—would be rendered more difficult, if not impossible, to perform. SOSRA’s argument to the contrary implies that SOSRA never has to render a final decision that meets the requirements set forth in the APA. We decline to adopt SOSRA’s argument that the APA does not apply to the committee’s assessment determination, and therefore we reaffirm our decision that a SOSRA administrative review must contain specific findings of fact or law pertaining to the results of the review.

Petition denied.